



State of Utah

GARY R. HERBERT

Governor

GREG BELL

Lieutenant Governor

TODD E. KISER

Acting Commissioner

Insurance Department

State of Utah Title and Escrow Commission Meeting Meeting Information

Date: **October 21, 2013** **Time:** **9:00 AM** **Place:** East Bldg, **Spruce** Room

MEMBERS

(Attendees = x)

COMMISSION MEMBERS

xChair, Kirk Smith, <i>Weber Cnty</i>	xMatt Sager, <i>Maricopa Cnty, AZ</i>
Co-Chair, Larry Blake, <i>Washington Cnty</i>	xSylvia Andersen, <i>Public Member</i>
xJeff Wiener, <i>Salt Lake Cnty</i>	

DEPARTMENT STAFF

xPerri Babalis, <i>AG Counsel</i>	xBrett Barratt, <i>Deputy Comm.</i>	xMark Kleinfeld, <i>ALJ</i>
Suzette Green-Wright, <i>MC Dir.</i>	Tammy Greening, <i>Examiner</i>	xJilene Whitby, <i>PIO Recorder</i>

PUBLIC

James Seaman	Carol Yamamoto	Pete Stevens
David Moore	Tige Garner	Lincoln Scoffield

MINUTES

General Session: (Open to the Public)

- **Welcome / Kirk Smith, Chair**
At 9:03am Kirk welcomed attendees and began the meeting.
- **Adopt Minutes of Previous Meeting**
Jeff made a **motion** to approve the minutes. No changes were made. Sylvia seconded the motion and the vote was unanimous.
- **Reports**
 - **Concur with Licensee Report for August & September / Brett**
Jeff made a **motion** to approve the August and September licensing reports, Matt seconded it and the vote was unanimous.
 - **Concur with Complaint & Enforcement Report / Brett**
Brett noted that on the Closed Investigation Summary Report's fifth column entitled "Reason Closed," e-case numbers have been added where other actions have been taken by the Department against a respondent. The Commission was happy with the change. Brett asked if they wanted to see Open and Closed Consumer Complaints back several years. Sylvia said it helped to show trends. Jeff made a **motion** to approve the Report, Matt seconded it and the vote was unanimous.
 - **Request for Dual Licensee Expedited Request:** None
 - **Request for Attorney Exemption:** None
- **Administrative Proceedings Action / ALJ**
 - **Stipulation & Order:** None
 - **Request for a Hearing: William's Title**
Mark suggested the Commission hear this case after the Title Commission meeting December 9, at 1pm. They could use the same room setup. Mark outlined how the hearing would proceed. The Commission will sit as jury off to the side of Mark. Their role is to be fact finders. Commission members can read the complaint. Mark will ask and entertain questions. Commission members can submit questions to him and he will determine if they are appropriate. If they can they should meet after the hearing and

make and deliver their decision to him. Notification of the hearing has been sent to all parties.

- **Order to Show Cause:** None
- **Informal Adjudicative Proceeding & Order:** None
- **Formal Adjudicative Proceeding & Prehearing Conference:** None
- **Old Business**
 - **Discuss Proposed Amendments to Rule [R592-2-7\(2\)](#)** / Perri
 - Perri said changes had been made to the entire rule. The major changes are in Sections 5 and 7. Subsection 5(3) reviews how adjudicative proceedings are handled. Matt liked how it allows for negotiations. Sylvia questioned if the last amount in Subsection 5(2) under the “1st Proceeding” was correct. Should it be \$1,250 and not \$250 Perri will check with Suzette.
 - Brett said the fines received by the Department ultimately go into the General Fund.
 - Sylvia expressed concern that the reinstatement fee and fine totaling \$180 would not make licensees more conscientious in renewing their licenses on time.
 - Jeff was concerned that the bulk of the Department’s time was being spent reinstating lapsed licenses. Brett thought a standard fine would help. Sylvia agreed. Brett will see how much of Adam’s time is spent processing lapsed licenses. Kirk said larger businesses are being fined more than smaller ones. It does not matter how much business is conducted. Jeff suggested expanding the matrix so there would be a standard fine for more than just unlicensed violations. Brett suggested a fine for first-time offenders and stiffer fines for a second offence. Matt suggested a second offence fine consider the number of closings done. The initial fine could be \$500 for individuals and \$1,000 for agencies. The draft was amended to show this amount.
 - SIRCON is working on a process that will notify the agency, as well as the producer, when a producer’s license lapses.
 - Jeff asked what “further resolution” meant as referred to in R592-2-7(5). Perri said that if the Commission does not concur with the penalty, the case would go back to the commissioner who could then start the penalty phase over or decide to not move forward. The Commission was okay with the language.
 - Jeff would like the public to know the fine amounts. Concern was expressed that if people know what the penalty will be for a violation they could make an economic decision as to whether it would be worthwhile to violate the law.
 - It was noted that individuals can always ask for a formal hearing.
 - Pete expressed concern with the Commission seeing all the evidence and facts before hearing a case. Perri said in court cases a judge will leave it up to the parties involved to decide if he should recuse himself. Matt suggested the Commission do the same thing.
 - Jeff thought the industry should know what steps they need to take to negotiate and move to a formal hearing.
 - Jeff made a **motion** to review this rule again next month. Brett will follow up with Suzette on the fine amount of \$250. Matt then seconded the motion and the vote was unanimous.
 - **Discuss Penalty Guidelines**
Already discussed.
 - **Update: SIRCON Sending Renewal Notices to Both Insurers & Agencies** / Brett
Already discussed.
- **New Business**
 - **Branch Office/Recovery Fund Assessment 2013 (31A-23a-415(2)(a) & R592-10** / Brett
The title assessments were sent out October 11. There were 150 branch offices assessed,

which is ten less than last year. There were 16 insurers assessed, up one from last year. The maximum allowable assessment amount is \$80,000. We assessed \$72,750, which leaves a deficit amount \$7,750, which was assessed to the remaining. The assessment is used to pay Tammy's salary and travel as well as reimburse Title Commission member for per diem expenses.

- Jeff asked what the claim disbursement was under the Recovery Fund. Perri said it is called the Title Insurance Recovery, Education and Research Fund Act. It was created in 2008 and is Chapter 41 of the Utah Code. The fund helps pay for title insurance related losses, as in the case when Canyon View Title Insurance Company went out of business. A claim was filed with the fund and \$15,000 was paid out. Perri suggested that the Commission review this act sometime. The Insurance Department has to step in and defend a lawsuit if a title insurance agency goes out of business. The statute states that there must be fraud, misrepresentation or deceit to be covered by the fund. The Department had to step in because there was no defendant. The Department had no facts and it took some time to process the claim. There has only been the one claim filed with the Fund since the statute put into effect in 2008. There is probably a better process.
- Jeff made a **motion** to approve the assessment, Matt seconded it and the vote was unanimous.

- **Other Business**

Kirk noted that the subcommittee set up to look at title licensing issues is now chaired by Wade Taylor and five individuals have agreed to participate.

Executive Session (Closed to Public)

General Session: (Open to the Public)

- **Adjourn:** **Motion** to adjourn by Matt then seconded by Jeff at 10:30am.
- **Next Meeting:** November 18 at 10:30 in the Spruce Room

2013 Meeting Schedule in Spruce Room
(2nd Monday except holidays, then 3rd Monday)

Jan 14	Feb 11	Mar 11	Apr 8	May 13	June 10
July 8	Aug 12	Sep 9	Oct 21	Nov 18	Dec 9